Montana Department of Natural Resources and Conservation
Water Resources Division
Water Rights Bureau

ENVIRONMENTAL ASSESSMENT
For Routine Actions with Limited Environmental Impact

Part I. Proposed Action Description

1. Applicant/Contact name and address: High Meadow Mountain, LLC
719 Second Ave, Suite 1401
Seattle, WA 98104

2. Type of action: Application To Change A Water Right No. 76M 30027822

3. Water source name: Nine Mile Creek tributary to the Clark Fork River

4. Location affected by project: Ninemile Creek in Section 1, T16N R24W and Sections 6, 7, 17, 18, 20, 21 in T16N, R23W, Missoula County

5. Narrative summary of the proposed project, purpose, action to be taken, and benefits:

The applicant proposes to temporarily change a portion of water right claim nos. 76M 118427 and 76M 118429 from irrigation to instream flow for fisheries. The amount of water to be changed is 9.93 cfs up to 141.96 acre-feet per year. Of this total amount of water, 4.43 cfs up to 123.06 acre-feet per year is supplied by water right number 76M 118427 with a priority date of April 1, 1907, and 5.5 cfs up to 18.9 acre-feet per year is supplied by water right number 76M 118429 with a priority date of May 31, 1938. These water rights were historically used to irrigate a combined total of 210 acres. The applicant will no longer irrigate 75 of the 210 acres, and dedicate the water historically consumed on the 75 acres to instream flow in Ninemile Creek. The consumed volume of water on the 75 acres no longer irrigated equals 141.96 acre-feet and is based on irrigation crop requirements. These water rights will continue to be used for irrigation of 135 acres from May 1 to October 4 each year. The applicant is also proposing to discontinue using the headgate and ditch system historically used, and switch to a pump and wheel line sprinkler system. Dedicating water to instream flow will benefit the fisheries resource in Ninemile Creek. The instream fisheries use will occur in an approximately 5.9 mile reach of Ninemile Creek starting from the applicant's proposed new diversion in the NESWNE of Section 1, Township 16 North, Range 24 West, downstream to a point just below the confluence of Fire Creek and Nine Mile Creek in the SE of Section 21, Township 16 North, Range 23 West, Missoula County.

The DNRC shall issue a change authorization if the applicant proves the criteria in 85-2-402 MCA are met.

6. Agencies consulted during preparation of the Environmental Assessment:
(include agencies with overlapping jurisdiction)

Montana Historical Society	Cultural Resource File Search
Montana Natural Heritage Program	Species of Concern
Montana Department of Fish, Wildlife and Parks	2005 Dewatered Stream List
Montana Department of Environmental Quality	303(d) list of impaired streams

Part II. Environmental Review

1. Environmental Impact Checklist:

PHYSICAL ENVIRONMENT

WATER QUANTITY, QUALITY AND DISTRIBUTION

Water quantity *- Assess whether the source of supply is identified as a chronically or periodically dewatered stream by DFWP. Assess whether the proposed use will worsen the already dewatered condition.*

The Department of Fish, Wildlife and Parks (FWP) lists Ninemile Creek as periodically dewatered (per FWP Dewatering Concern Areas, May 2005) in the lower three miles of the stream. Streams are classified as periodically dewatered when dewatering is a significant problem only in drought or water-short years. The applicant is proposing to take a water right for a consumptive use (irrigation) and change a portion of it to a non-consumptive use (instream flow). This will improve stream flow conditions in the proposed 5.9 mile protected reach, and may improve the dewatered condition in the lower three miles of Ninemile Creek. The proposed change to instream flow will not worsen the periodic dewatering of Ninemile Creek.

Determination: No impact.

Water quality *- Assess whether the stream is listed as water quality impaired or threatened by DEQ, and whether the proposed project will affect water quality.*

The Department of Environmental Quality (DEQ) does lists Ninemile Creek as water quality impaired or threatened. DEQ identifies Ninemile Creek as fully supporting agricultural, industrial and recreational uses, and partially supports aquatic life and cold water fisheries. The probable causes of the impaired listing are low flow alterations from agricultural diversions and sedimentation/siltation from abandoned mine sites and streambank alterations. The proposed project will not adversely affect water quality. The purpose of the project is to leave water instream to benefit fisheries and the aquatic ecosystem.

Determination: No impact.

Groundwater *- Assess if the proposed project impacts ground water quality or supply. If this is a groundwater appropriation, assess if it could impact adjacent surface water flows.*

Determination: N/A

DIVERSION WORKS - *Assess whether the means of diversion, construction and operation of the appropriation works of the proposed project will impact any of the following: channel impacts, flow modifications, barriers, riparian areas, dams, well construction.*

To exercise the instream portion of this right, no means of diversion or conveyance are needed other than the natural stream channel. The installation of a new pump site on Ninemile Creek for irrigation may temporarily impact a very small area of streambank (less than 1 acre) during construction. The applicant applied for and received a 310 permit for construction of the new pump site. According to the 310 permit application the construction of the new pump site will disturb a 5 foot by 10 foot area adjacent to the bank. The 310 permit required that all disturbed soils be reseeded with a native grass seed mixture. There will be no construction that would impact the stream channel, or create a barrier to fish migration. There are no dams associated with this project. The project will not alter groundwater quality or quantity; therefore well construction will not be impacted. The project will result in flow modifications, however, the end result will be more water flowing in Ninemile Creek, to the benefit of aquatic life and cold-water fisheries.

Determination: No impact.

UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES

Endangered and threatened species - *Assess whether the proposed project will impact any threatened or endangered fish, wildlife, plants or aquatic species or any "species of special concern," or create a barrier to the migration or movement of fish or wildlife. For groundwater, assess whether the proposed project, including impacts on adjacent surface flows, would impact any threatened or endangered species or "species of special concern."*

The Montana Natural Heritage Program was contacted to determine if there are any threatened or endangered fish, wildlife, plants or aquatic species or any "species of special concern", that could be impacted by the proposed project.

The Montana Natural Heritage Program identified the following animal species, Bull Trout, Cutthroat Trout, Canadian Lynx, Gray Wolf and Olive-sided Fly Catcher occurring within the vicinity of Township 16 North, Range 23 West, Missoula County. In addition, the following sensitive plant species was also identified; Yerba Buena.

Since the proposed change in water use to instream flow will require only minimal construction for the new pump site, and no other site disturbances, plant species should not be impacted. The applicants are proposing to reduce the historic diversion rate, and leave 9.93 cfs in Nimemile Creek. This change in purpose to instream flow will benefit aquatic life in Ninemile Creek, therefore Bull Trout and Cutthroat Trout should not be impacted. This change to instream flow will not result in the loss or alteration of any Lynx or Gray Wolf habitat

Determination: No impact.

Wetlands - *Consult and assess whether the apparent wetland is a functional wetland (according to COE definitions), and whether the wetland resource would be impacted.*

This project does not involve any wetlands.

Determination: No impact.

Ponds *- For ponds, consult and assess whether existing wildlife, waterfowl, or fisheries resources would be impacted.*

This project does not involve any ponds.

Determination: No impact.

GEOLOGY/SOIL QUALITY, STABILITY AND MOISTURE - *Assess whether there will be degradation of soil quality, alteration of soil stability, or moisture content. Assess whether the soils are heavy in salts that could cause saline seep.*

The proposed project will not cause any degradation of soil quality or alteration of soil stability or moisture content. The proposed project will result in substantially less water being applied to soils for irrigation, as the applicant will now use a pump and sprinklers to irrigate the remaining 135 acres of pasture. The place of use for these water rights has been irrigated for many decades without soil degradation. The soils are not high in salts and saline seep has not occurred. The change to instream flow will not affect soil stability or moisture content.

Determination: No impact.

VEGETATION COVER, QUANTITY AND QUALITY/NOXIOUS WEEDS - *Assess impacts to existing vegetative cover. Assess whether the proposed project would result in the establishment or spread of noxious weeds.*

Construction activities will be limited to installing a new pump site and disturbance to existing vegetative cover will be minimal. The applicant stated that a 50 square foot area would be disturbed building the new pump site. Any soil disturbance can result in establishment of noxious weeds, however, the proposed new pump site is located on the applicant's private property and control of noxious weeds will be the responsibility of the land owner. The applicant was required to reseed all disturbed soils with a native grass mixture as a condition of 310 permit approval. The change of purpose to instream flow will not result in the spread of noxious weeds.

Determination: No impact.

AIR QUALITY - *Assess whether there will be a deterioration of air quality or adverse effects on vegetation due to increased air pollutants.*

There will be no source of pollutants associated with the change in water use that will alter air quality.

Determination: No impact.

HISTORICAL AND ARCHEOLOGICAL SITES - *Assess whether there will be degradation of unique archeological or historical sites in the vicinity of the proposed project.*

There will be no construction or other activities that could degrade unique archeological or historical sites. There are no known unique archeological or historical sites in the vicinity of the proposed project.

Determination: No impact.

DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AND ENERGY - *Assess any other impacts on environmental resources of land, water and energy not already addressed.*

None identified.

Determination: No impact.

HUMAN ENVIRONMENT

LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS - *Assess whether the proposed project is inconsistent with any locally adopted environmental plans and goals.*

There are no locally adopted environmental plans or goals.

Determination: No impact.

ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES - *Assess whether the proposed project will impact access to or the quality of recreational and wilderness activities.*

Reducing the applicant's diversion of Ninemile Creek water for irrigation may improve recreational activities provided by Ninemile Creek. The proposed project will not impact access to or the quality of recreational and wilderness activities.

Determination: No impact.

HUMAN HEALTH - *Assess whether the proposed project impacts on human health.*

The proposed change in water use may improve water quality in Ninemile Creek.

Determination: No impact.

PRIVATE PROPERTY - *Assess whether there are any government regulatory impacts on private property rights.*
Yes___ No_XX__ If yes, analyze any alternatives considered that could reduce, minimize, or eliminate the regulation of private property rights.

Determination: No impact.

OTHER HUMAN ENVIRONMENTAL ISSUES - *For routine actions of limited environmental impact, the following may be addressed in a checklist fashion.*

Impacts on:

(a) *Cultural uniqueness and diversity?* No impact.

(b) *Local and state tax base and tax revenues?* No impact.

(c) *Existing land uses?* 5 acres of pasture will no longer be irrigated.

(d) *Quantity and distribution of employment?* No impact.

(e) *Distribution and density of population and housing?* No impact.

(f) *Demands for government services?* No impact.

(g) *Industrial and commercial activity?* No impact.

(h) *Utilities?* No impact.

(i) *Transportation?* No impact.

(j) *Safety?* No impact.

(k) *Other appropriate social and economic circumstances?* No impact.

2. *Secondary and cumulative impacts on the physical environment and human population:*

Secondary Impacts None identified.

Cumulative Impacts None identified.

3. *Describe any mitigation/stipulation measures:* None identified.

4. *Description and analysis of reasonable alternatives to the proposed action, including the no action alternative, if an alternative is reasonably available and prudent to consider:* No alternative identified.

PART III. Conclusion

1. Preferred Alternative N/A

2 Comments and Responses N/A

3. ***Finding:***
*Yes___ No_**XX**__ Based on the significance criteria evaluated in this EA, is an EIS required?*

If an EIS is not required, explain why the EA is the appropriate level of analysis for this proposed action:

No reasonable alternatives were identified in the EA.

Name of person(s) responsible for preparation of EA:

Name: Jim Nave
Title: Water Resource Specialist
Date: 9/27/2007